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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,422	08/31/2001	John Joseph DiEnno	9D-DW-19893	7785
23465	7590	05/27/2008		
JOHN S. BEULICK C/O ARMSTRONG TEASDALE, LLP ONE METROPOLITAN SQUARE SUITE 2600 ST LOUIS, MO 63102-2740			EXAMINER HANSEN, JAMES ORVILLE	
			ART UNIT 3637	PAPER NUMBER
			NOTIFICATION DATE 05/27/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USpatents@armstrongteasdale.com

Office Action Summary

Application No.

09/682,422

Applicant(s)

DIENNO ET AL.

Examiner

James O. Hansen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-7 and 9-21 is/are pending in the application.
- 4a) Of the above claim(s) 3, 6 and 10-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 7, 9, 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 4, 5, 7, 9 & 21 are still rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claims 1 & 7, the clarity issue surrounding the “retaining slot” is still unresolved as constituting a “formation” that downwardly depends from the lower edge of the control panel mounting portion. The position has been set forth in the previous Office actions and reiterated again in the hope that an understanding of the claimed language will be clarified in view of the disclosure as filed that is in keeping with applicant’s intent. From the examiners perspective, the combination of the lip (228) and flange (230) constitute the main portion of the plurality of formations and these distinct elements together form the retaining slot (232). Ribs (212), which may constitute a portion of the formations in themselves, appear to be extended into the slot for engaging a panel received in the slot. As such, the “retaining slot” is not necessarily an element of structure, but rather a byproduct of the lip and flange structures that when spaced apart forms a void between the structures that constitutes the slot. A void is not deemed to constitute a “formation that downwardly depends from a lower edge” in this situation, but rather a lip spaced from a flange forming a slot therebetween with ribs extending into the slot seems to accurately define the structure that is present in the embodiment. Accordingly, the claims are still deemed indefinite since the metes and

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bounds of patent protection being sought is not clearly set forth. Consequently, the remaining claims are rejected since they are dependent upon an indefinite claim.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, 5, 7, 9 & 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sulcek [U.S. Patent No. 4,478,465] in view of Vogler [U.S. Patent No. 5,625,969]. Sulcek (figures 1-4) teaches of an “escutcheon” for an appliance door assembly, the escutcheon comprising: a front edge and a rear edge horizontally spaced from the front edge, the front and rear edges vertically depending from an escutcheon upper surface; a control panel mounting portion comprising a mounting surface and a lower edge, the control panel mounting portion extending upwardly and inwardly from the lower edge and between the front and rear edges, the control panel mounting portion including a plurality of inherent openings there through; and a plurality of formations downwardly from the lower edge comprising a retaining slot defined by a lip and a flange spaced from the lip to define the retaining slot, the flange extending at an acute angle with respect to the lip, the retaining slot configured to receive an upper edge of the panel on the appliance [see Exhibit C – previously submitted with the last Final office action]. The position is taken that Sulcek teaches the claimed limitations in the same manner that applicant discloses, as best understood, in view of the

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disclosure as originally filed wherein the formation(s) consists of a continuous lip (228) with a flange/guide surface (230) forming a slot (232). Sulcek does not show the incorporation of positioning ribs extending into the retaining slot. Vogler (figures 1-5) is cited as an evidence reference to show that it was known in the panel securing art to utilize positioning ribs (R) within a retaining slot (fig. 3) for the purpose of securing a panel (P) within the slot. The ribs comprising a reinforcing section (viewed as the section upon which the ribs are attached – so far as broadly claimed) configured to prevent flexing of the ribs. Accordingly, the position is taken that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the device of Sulcek so as to incorporate positioning ribs within the slot as taught by Vogler because this arrangement would provide Sulcek with a means to insure a tight secure engagement of the upper margin of the plate within the retaining slot [note Vogler – col. 5 lines 15-27].

Response to Arguments

3. Applicant's arguments filed February 29, 2008 have been fully considered but they are not persuasive. In response to applicant's arguments that "all the limitations must be taught or suggested by the prior art" note the following: The Supreme Court Decision *KSR International Co. v. Teleflex Inc.*, 550 U.S.-, 82 USPQ2d 1385 (2007) forecloses the argument that a specific teaching, suggestion, or motivation be required to support a finding of obviousness, note *Ex parte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. & Interf. June 25, 2007) {citing *KSR*, 82 USPQ2d at 1396}. The Supreme Court in *KSR International Co. v. Teleflex Inc.* stated that the Federal Circuit erred when it applied the well-known teaching-suggestion-motivation (TSM) test in an overly

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rigid and formalistic way. Under the TSM test, a claimed invention is obvious when there is a teaching, suggestion, or motivation to combine prior art teachings. The teaching, suggestion, or motivation may be found in the prior art, in the nature of the problem, or in the knowledge of a person having ordinary skill in the art. According to the Supreme Court, the TSM test is one of a number of valid rationales that could be used to determine obviousness. It is not the only rationale that may be relied upon to support a conclusion of obviousness. Where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ. 2d 1509, 1518-19 (BPAI, 2007) (citing *KSR v. Teleflex*, 127 S.Ct. 1727, 1740, 82 USPQ. 2d 1385, 1396 (2007)). Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ. 2d at 1518-19 (BPAI, 2007) (citing *KSR*, 127 S.Ct. at 1740, 82 USPQ. 2d at 1396. Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866. The examiner can be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James O. Hansen/
Primary Examiner, Art Unit 3637

JOH
May 19, 2008